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OFFICE OF PETITIONS

In re Patent No. 6,887,985	:	DECISION ON REQUEST FOR
Maertens et al.	:	RECONSIDERATION OF
Issue Date: May 3, 2005	:	PATENT TERM ADJUSTMENT
Application No. 09/899,302	:	and
Filed: July 6, 2001	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 2752-48	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATNET TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(D)," filed June 30, 2005. Patentees request that the patent term adjustment indicated in the patent be corrected from two (2) days to two hundred seventy-four (274) days.

The request for reconsideration of patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **TWO HUNDRED TWELVE (212)** days.

On May 3, 2005, the above-identified application matured into U.S. Patent No. 6,887,985 with a revised patent term adjustment of 2 days. On June 30, 2005, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 274 days.

Patentees dispute the reductions of 90 days and 120 days, pursuant to 1.704(c)(10). Patentees note that there is no record in the applicants file, or the PTO Image File Wrapper, of an Information Disclosure Statement filed June 26, 2004, or of a "Miscellaneous Incoming Letter" filed March 28, 2004.

However, patentees do acknowledge filing on March 26, 2004 a Request for a completely initialled copy of the PTO-1449 form filed by facsimile on January 6, 2005. Patentees state that the filing of this paper did not constitute a failure by the applicants to engage in reasonable efforts to conclude prosecution. Patentees state that while the request submitted March 26, 2004 was a paper filed after a Notice of Allowance, the applicants had no opportunity prior to receipt of the Notice of Allowance to request correction of the incompletely initialled PTO-1449 Form, which was only received with the Notice of Allowance dated March 10, 2004.

In addition, patentees assert entitlement to 342 days of patent term adjustment for the Office's failure to issue a patent within three years of the actual filing date of the application.

The application history has been reviewed. First, of all, it is agreed that there is no Information Disclosure Statement (or other paper of record) filed by applicants in this application on June 26, 2004. Accordingly, it is concluded that the reduction of 120 days associated with the filing of such a paper is not warranted. The reduction of 120 days has been removed.

Secondly, the acknowledged Request for a completely initialled copy of the PTO-1449 is the paper received in the Office on March 28, 2004. This is the miscellaneous incoming letter, which caused a reduction of 90 days. Nonetheless, it is concluded that under the circumstances the filing of the letter requesting return of an initialled 1449 should not be considered "a failure to engage in reasonable efforts" to conclude processing or examination of an application and should not result in reduction of the patent term adjustment pursuant to 37 CFR 1.704(c)(10). As stated by patentees, the PTO-1449 attached to the notice of allowance was not completely initialled. Moreover, the Communication filed March 28, 2004, was the first opportunity by applicants to address the matter. Thus, it is concluded that the reduction of 90 days is not warranted.

Finally, as to the request for an additional 342 days of adjustment, patentees' assertions are not well-taken. As to the period of adjustment, it is agreed that the instant patent issued 3 years and 301 days after its filing date. However, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was

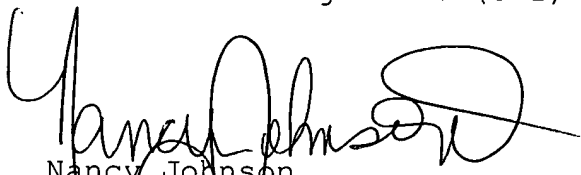
pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the periods of delay totalling 229 days attributable to grounds specified in § 1.702(a)(1) and § 1.702(a)(4) overlap with the 301 days attributable to the delay in the issuance of the patent. An additional period of adjustment of 72 days was entered for Office delay in issuing the patent to reach the actual number of days of delay of 301 days.

In view thereof, the patent should have issued with a patent term adjustment of 212 days (301 days reduced by 89 days).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **TWO HUNDRED TWELVE (212)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction